

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

REMBRANDT ENTERPRISES, INC,)	
)	
Counter Claimant,)	
)	
v.)	No. 3:17-cv-00141-JMS-MPB
)	
REXING QUALITY EGGS,)	
LEO R. REXING,)	
DYLAN REXING,)	
JOSEPH L. REXING,)	
)	
Counter Defendants.)	

EXHIBIT 2 - PROPOSED PRELIMINARY INSTRUCTIONS

Ladies and gentlemen, you are now the jury in this case, and I want to take a few minutes to tell you about your duties as jurors and to give you preliminary instructions. At the end of the trial, I will give you more detailed instructions. Those instructions will control your deliberations.

One of my duties is to decide all questions of law and procedure. From time to time during the trial and at the end of the trial, I will instruct you on the rules of law that you must follow in making your decision.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what your verdict should be.

Preliminary Instruction No. 1

[Parties' joint case synopsis]

Preliminary Instruction No. 2

When I say a particular party must prove something by “the greater weight of the evidence,” or when I use the expression “if you find,” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side is not necessarily evidence of a greater weight of the evidence.

You should base your decision on all of the evidence, regardless of which party presented it.

Preliminary Instruction No. 3

You must give separate consideration to each claim and each party in this case. Although there are four defendants, it does not follow that if one is liable, any of the others is also liable.

If evidence was admitted only as to fewer than all defendants or all claims: In considering a claim against a defendant, you must not consider evidence admitted only against other defendants.

Preliminary Instruction No. 4

Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

In this case two of the parties are corporations, one party is from outside Indiana, and the other parties are all from Indiana. All parties are equal before the law. A corporation or non-resident is entitled to the same fair consideration that you would give any individual person or resident.

Preliminary Instruction No. 5

From time to time during the trial, I may be called upon to make rulings of law on objections or motions made by the lawyers. You should not infer or conclude from any ruling or other comment I may make that I have any opinions about how you should decide this case. And if I should sustain an objection to a question that goes unanswered by a witness, you should not guess or speculate what the answer might have been, and you should not draw any inferences or conclusions from the question itself.

Preliminary Instruction No. 6

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and any facts that I may instruct you to find or the parties may agree or stipulate to. A stipulation is an agreement between both sides that certain facts are true.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you when that occurs, and instruct you on the purposes for which the item can and cannot be used.

The following things are not evidence, and you must not consider them as evidence in deciding the facts of this case: the attorneys' statements, arguments, questions, and objections of the attorneys; any testimony that I instruct you to disregard; and anything you may see or hear when the Court is not in session, even if what you see or hear is done or said by one of the parties or by one of the witnesses.

Preliminary Instruction No. 7

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact or a series of facts that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago, and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

Preliminary Instruction No. 8

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness' memory;
- any interest, bias, or prejudice the witness may have;
- the witness' intelligence;
- the manner of the witness while testifying; and
- the reasonableness of the witness' testimony in light of all the evidence in the case.

Preliminary Instruction No. 9

At times during the trial it may be necessary for me to talk with the lawyers here at the bench out of your hearing, or by calling a recess. We meet because often during a trial something comes up that doesn't involve the jury.

We will, of course, do what we can to keep the number and length of these conferences to a minimum. But you should remember the importance of the matter you are here to determine and should be patient even though the case may seem to go slowly.

Preliminary Instruction No. 10

Any notes you take during this trial are only aids to your memory. The notes are not evidence. If you do not take notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

When you leave the courthouse during the trial, your notes should be left in the jury room. When you leave at night, your notes will be secured and not read by anyone. At the end of the trial, your notes will be destroyed, and no one will be allowed to read the notes before they are destroyed.

Preliminary Instruction No. 11

Pay close attention to the testimony as it is given. At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult.

Preliminary Instruction No. 12

During the trial, I may sometimes ask a witness questions or seek clarification of an answer or question. Do not assume that because I ask questions I hold any opinion on the matters I ask about, or on how the case should be decided.

Preliminary Instruction No. 13

All jurors must follow certain rules of conduct, and you must follow them, too.

First, until you are discharged as a juror, you must not consume any alcohol, drugs, or other substances that would prevent you from understanding and considering the evidence in this case fairly and impartially.

Second, until you have finished your deliberations, you must not discuss this case with anyone—including with members of your family, people involved in the trial, or anyone else. This includes not mentioning this case on Instagram, Snapchat, Facebook, LinkedIn, YouTube, or Twitter or on a post to any website. You must not let others discuss the case with you. If anyone tries to talk to you about the case please let me know about it immediately. The trial lawyers are not allowed to speak with you during this case. When you see them at recess or pass them in the halls and they do not speak to you, they are not being rude or unfriendly; they are simply following the law. If any attempt is made by anyone to talk to you concerning this case, you should report that fact to the Courtroom Deputy immediately.

Third, you must decide this case based solely on the evidence presented here within the four walls of this courtroom. This means that during the trial you must not conduct any independent research about this case, the matters in the case, and the individuals or corporations involved in the case. In other words, you should not consult dictionaries or reference materials, search the internet, websites, blogs, or use any other electronic tools to obtain information about this case or to help you decide the case. Please do not try to find out information from any source outside the confines of this courtroom.

Fourth, you must not read any news stories or articles or listen to any radio or television reports about the case or about anyone who has anything to do with it.

Fifth, if you need to communicate with me, you must give a signed note to the bailiff to give to me.

Sixth, you must not make up your mind about what the verdict should be until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence. Until that time, do not discuss the case with your fellow jurors, and keep an open mind.

Finally, if at any time you decide that you have personal knowledge about any fact that is material to this case, you must inform the Court immediately in writing.

Preliminary Instruction No. 14

The trial will proceed in the following manner:

First, Rembrandt's attorney may make an opening statement. Next, the Rexings' attorney(s) may make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney expects the evidence to be.

After the opening statements, Rembrandt will call witnesses and present evidence. Then, the Rexings will have an opportunity to call witnesses and present evidence. After the parties' main cases are completed, Rembrandt may be permitted to present rebuttal evidence and the Rexings may be permitted to present sur-rebuttal evidence.

After the evidence has been presented, the attorneys will make closing arguments and I will instruct you on the law that applies to the case.

After that, you will go to the jury room to deliberate on your verdict.